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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/282,157	03/31/1999	SAM E. KINNEY, JR.	046700-5005	8245

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EXAMINER

BASHORE, ALAIN L

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/282,157

Applicant(s)

KINNEY, JR. ET AL. 

Examiner

Alain L. Bashore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11-5-02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-60,69 and 71-74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-60,69 and 71-74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 16.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 11-5-02 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patents listed that are not in the English language.

Therefore the two Japanese patents have been place in the file but have not been considered.

Specification

2. The disclosure is objected to because of the following informalities:

Figures 6a-6c are not individually described in the brief description of the drawings.

Appropriate correction is required.

Claim Objections

3. Claim 60 is objected to because of the following informalities:

In claim 60 there is recited "said coal" which lacks antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 72-74 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

There is recited in claims 72-74 computer readable program code. The specification does not include description that would enable one with ordinary skill in the art to make code (i.e. flow charts, algorithms, logic schematics etc....).

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 11, 31, 50-52, and 58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 11, 31, 51, 52, and 58 there is claimed: generating “detransformed” bid information. This is confusing since there is no earlier recitation to transformed bid information.

In claims 50 and 60 there is claimed "unique" and "uniquely", respectfully, which are both considered relative terms. What is "unique" to one may not be "unique" to another.

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 72-74 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

A computer program must be claimed as a computer-readable medium encoded with a data structure. There must be positively recited in the body of the claim at least one recitation defining structural and functional interrelationships between the data structure and the computer software and hardware components (a useful, concrete and tangible result produced). This permits the data structure's functionality to be realized, as more than a manipulation of an abstract idea [*In re Wamerdam*, 33 F.3d 1354; 31 USPQ2d 1754 (Fed. Cir. 1994)].

Since the claims do not include least one recitation defining structural and functional interrelationships between the data structure and the computer software and hardware components, no useful, concrete and tangible result is produced.

10. Claims 1-20, 41-60, 69, and 71 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The business method claims as presented do not claim a technological basis in the body of the claim. While the specification discloses such a basis, there is no basis claimed. Without a claimed basis, the claim may be interpreted in an alternative as involving no more than a manipulation of an abstract idea and therefore non-statutory under 35 U.S.C. 101. In contrast, a business method claim that includes in the body of the claim at least one structural / functional interrelationship which can only be computer implemented is considered to have a technological basis.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-4, 6-7, 9-14, 16-17, 19-24, 26-27, 29-34, 36-37, 39-46, 48-49, 51-56, 58-59, 69, and 71-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausubel (383) in view of Popolo.

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Ausube (383) discloses a method, system, and computer program product on computer useable medium of conducting an electronic online auction between a plurality of potential bidders, the plurality of potential bidders competing for a lot (i.e. multiple objects together; col 4, lines 29-39) having at least one product (col 2, lines 51-67; col 3, lines 1-67; col 4, lines 1-29). Participants of the online auction include a sponsor and at least two potential bidders competing for award of a lot (col 3, lines 1-5). Multiple bid information is received for a lot from multiple bidders (col 2, lines 61-62).

The received first bid information represents a first bid that is originally defined in a context of the first bidder (col 4, lines 5-10). Information reflective of the submitted first bid is stored, the stored information enabling a relative comparison of submitted bids (col 6, lines 11-27). Since multiple bidders and multiple bids are transmitted, and second bid information is transmitted.

Ausubel (383) discloses performing a non-linear transformation (col 8, lines 1-19) using a lookup table (col 8, line 5). Since Ausubel (383) teaches performing his demand curve using a look-up table with a non-increasing constraint (i.e. linear), there is disclosed performing a combination of linear, non-lineear, and look-up table transformations simultaneously (col 8, lines 15-19).

Ausubel (383) discloses functional equivalence to “common competitive basis” because he teaches basis for auctions that require common-value component of valuation and the competitive nature of bids in general (col 1, lines 22-25).

Ausubel (383) does not explicitly disclose:

enabling a second bidder to view or display a bid originally defined in a context of said first bidder in said context of said second bidder as a relative comparison; and

enabling a bidder to view or display a bid originally defined in a context of a bidder in a context of the buyer;

generating detransformed bid information not previously transformed which is transmitted to a second bidder;

performing a linear transformation having at least one of a multiplicative adjustment and an additive adjustment; and,

a received bid price (untransformed bid information), specified in a local currency of said first bidder which is converted (generating a transformed bid using first bid information) to yield a base currency bid price.

Popolo discloses a received bid price (untransformed bid information), specified in a local currency of said first bidder which is converted (generating a transformed bid using first bid information) to yield a base currency bid price (col 4, lines 20-45). There is also disclosed enabling a bidder to view or display a bid originally defined in a context

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of a bidder in a context of the buyer (col 2, lines 4-12). A second bidder may view or display a bid originally defined in a context of said first bidder in said context of said second bidder as a relative comparison (col 14, lines 50-54; col 15, lines 1-60; col 16, lines 1-24). Detransformed bid information not previously transformed is transmitted (col 14, lines 18-25).

It would have been obvious to one with ordinary skill in the art to include a received bid price (untransformed bid information), specified in a local currency of said first bidder which is converted (generating a transformed bid using first bid information) to yield a base currency bid price to Ausubel (383) because Popolo teaches convenience for comparison purposes (col 2, lines 2-7).

It would have been obvious to one with ordinary skill in the art to enabling a second bidder to view or display a bid originally defined in a context of said first bidder in said context of said second bidder as a relative comparison to Ausubel (383) because Popolo teaches that bidders may require changing bids (col 15, lines 24-27).

It would have been obvious to one with ordinary skill in the art to include enabling a bidder to view or display a bid originally defined in a context of a bidder in a context of the buyer to Ausubel (383) because of what is taught by Popolo. Popolo teaches that context definition is important to reduce time and expense by increasing coordination between buyers and sellers. (col 1, lines 14-67; col 2, lines 1-12).

It would have been obvious to one with ordinary skill in the art to transmit detransformed bid information not previously transformed to Ausubel (383) because Popolo teaches bidders may by-pass normal procedures to present bid information for consideration (col 14, lines 20-22).

13. Claims 5, 15, 25, 35, 50 and 60 are rejected under 35 U.S.C. 103(a) as unpatentable over Ausubel (383) in view of Popolo as applied to claims 1-4, 6-7, 9-14, 16-17, 19-24, 26-27, 29-34, 36-37, 39-46, 48-49, 51-56, 58-59, 69, and 71-74 above, and further in view of (Walsh and Walker et al (207)).

Ausubel (383) in view of Popolo does not disclose transforming a received price per physical measure of weight or volume of coal into a standardized unit of value to the buyer of coal using multiplicative adjustments and additive adjustments based upon one or more of the thermal content, percentage sulfur, percentage ash, percentage water, and hardness of coal of said first bidder.

Walsh discloses coal and its intrinsic value for low ash and sulphur content (col 1, lines 1-49).

It would have been obvious to one with ordinary skill in the art to include transforming a standardized unit of value to the buyer of coal based upon percentage sulfur of Walsh to Ausubel (383) in view of Popolo because of what is taught by both

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Walsh and Walker et al (207). Walker et al (207) teaches coal as a commodity which can be auctioned (col 2, line 54) and Walsh teaches a basis to evaluate intrinsic value of coal.

Response to Arguments

14. Applicant's arguments with respect to claims of record have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shepard, Johnson et al, and Gaus et al disclose comparisons of bids.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alain L. Bashore whose telephone number is 703-308-1884. The examiner can normally be reached on about 7:30 am to 5:00 pm (Alternate Fridays Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1065. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-1113.

A handwritten signature in black ink, appearing to read 'Alain L. Bashore'.

Alain L. Bashore

January 24, 2003